

ASSEMBLY BILL

No. 143

Introduced by Assembly Member Fuentes

January 13, 2011

An act to amend Sections 49075 and 49076 of the Education Code, relating to pupil records.

LEGISLATIVE COUNSEL'S DIGEST

AB 143, as introduced, Fuentes. Pupil records: privacy rights.

Existing law prohibits a school district from permitting access to pupil records to a person without written parental consent or under judicial order, except to specified persons under certain circumstances, including to a probation officer or district attorney for the purposes of conducting a criminal investigation, or an investigation in regards to declaring a person a ward of the court or involving a violation of a condition of probation.

This bill would additionally allow school districts to permit a minor's counsel to access pupil records for the same purposes stated above.

Existing law authorizes a school district to permit access to pupil records to a person for whom a parent of the pupil has executed written consent specifying the records to be released and identifying the party or class to whom the records may be released and requires the recipient to be notified of the prohibition against transmitting the information to others without the written consent of the parent.

This bill would require officials and authorities receiving pupil records pursuant to specified law to certify in writing to the school district that the information shall not be disclosed to another party, except as provided under state law, without the prior written consent of the parent

of the pupil or the person identified as the holder of the pupil's educational rights.

The bill would also make various technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 49075 of the Education Code is amended
2 to read:

3 49075. (a) A school district may permit access to pupil records
4 to ~~any~~ a person for whom a parent of the pupil has executed written
5 consent specifying the records to be released and identifying the
6 party or class of parties to whom the records may be released. The
7 recipient ~~must~~ *shall* be notified that the transmission of the
8 information to others without the written consent of the parent is
9 prohibited. The consent notice shall be permanently kept with the
10 record file.

11 (b) *The officials and authorities to whom pupil records are*
12 *disclosed pursuant to subdivision (f) of Section 48902 and*
13 *paragraph (9) of subdivision (a) of Section 49076 shall certify in*
14 *writing to the disclosing school district that the information shall*
15 *not be disclosed to another party, except as provided under state*
16 *law, without the prior written consent of the parent of the pupil,*
17 *or the person identified as the holder of the pupil's educational*
18 *rights.*

19 ~~(b)~~

20 (c) Notwithstanding subdivision (a), school lunch applications
21 and information shared pursuant to Section 49557.2 shall be
22 retained by any school district in the manner most useful to the
23 administration of the school lunch program.

24 SEC. 2. Section 49076 of the Education Code is amended to
25 read:

26 49076. A school district is not authorized to permit access to
27 pupil records to ~~any~~ a person without written parental consent or
28 under judicial order except that:

29 (a) Access to those particular records relevant to the legitimate
30 educational interests of the requester shall be permitted to the
31 following:

1 (1) School officials and employees of the district, members of
2 a school attendance review board appointed pursuant to Section
3 48321, and any volunteer aide, 18 years of age or older, who has
4 been investigated, selected, and trained by a school attendance
5 review board for the purpose of providing followup services to
6 pupils referred to the school attendance review board, provided
7 that the person has a legitimate educational interest to inspect a
8 record.

9 (2) Officials and employees of other public schools or school
10 systems, including local, county, or state correctional facilities
11 where educational programs leading to high school graduation are
12 provided or where the pupil intends to or is directed to enroll,
13 subject to the rights of parents as provided in Section 49068.

14 (3) Authorized representatives of the Comptroller General of
15 the United States, the Secretary of Education, and administrative
16 head of an education agency, state education officials, or their
17 respective designees, or the United States Office of Civil Rights,
18 where the information is necessary to audit or evaluate a state or
19 federally supported education program or pursuant to a federal or
20 state law, provided that except when collection of personally
21 identifiable information is specifically authorized by federal law,
22 ~~any~~ data collected by those officials shall be protected in a manner
23 ~~which~~ *that* will not permit the personal identification of pupils or
24 their parents by other than those officials, and ~~any~~ personally
25 identifiable data shall be destroyed when no longer needed for the
26 audit, evaluation, and enforcement of federal legal requirements.

27 (4) Other state and local officials to the extent that information
28 is specifically required to be reported pursuant to state law adopted
29 prior to November 19, 1974.

30 (5) Parents of a pupil 18 years of age or older who is a dependent
31 as defined in Section 152 of ~~the Internal Revenue Code of 1954~~
32 *Title 26 of the United States Code*.

33 (6) A pupil 16 years of age or older or having completed the
34 10th grade who requests access.

35 (7) ~~Any~~ A district attorney who is participating in or conducting
36 a truancy mediation program pursuant to Section 48263.5, or
37 Section 601.3 of the Welfare and Institutions Code, or participating
38 in the presentation of evidence in a truancy petition pursuant to
39 Section 681 of the Welfare and Institutions Code.

1 (8) A prosecuting agency for consideration against a parent or
2 guardian for failure to comply with the Compulsory Education
3 Law (Chapter 2 (commencing with Section 48200) of Part 27) or
4 with Compulsory Continuation Education (Chapter 3 (commencing
5 with Section 48400) of Part 27).

6 (9) ~~Any~~ A probation officer ~~or~~, district attorney, *or minor's*
7 *counsel* for the purposes of conducting a criminal investigation or
8 an investigation in regards to declaring a person a ward of the court
9 or involving a violation of a condition of probation.

10 (10) ~~Any~~ A judge or probation officer for the purpose of
11 conducting a truancy mediation program for a pupil, or for purposes
12 of presenting evidence in a truancy petition pursuant to Section
13 681 of the Welfare and Institutions Code. The judge or probation
14 officer shall certify in writing to the school district that the
15 information will be used only for truancy purposes. A school
16 district releasing pupil information to a judge or probation officer
17 pursuant to this paragraph shall inform, or provide written
18 notification to, the parent or guardian of the pupil within 24 hours
19 of the release of the information.

20 (11) ~~Any~~ A county placing agency for the purpose of fulfilling
21 the requirements of the health and education summary required
22 pursuant to Section 16010 of the Welfare and Institutions Code or
23 for the purpose of fulfilling educational case management
24 responsibilities required by the juvenile court or by law and to
25 assist with the school transfer or enrollment of a pupil. School
26 districts, county offices of education, and county placing agencies
27 may develop cooperative agreements to facilitate confidential
28 access to and exchange of the pupil information by electronic mail,
29 facsimile, electronic format, or other secure means.

30 (b) School districts may release information from pupil records
31 to the following:

32 (1) Appropriate persons in connection with an emergency if the
33 knowledge of the information is necessary to protect the health or
34 safety of a pupil or other persons.

35 (2) Agencies or organizations in connection with the application
36 of a pupil for, or receipt of, financial aid. However, information
37 permitting the personal identification of a pupil or his or her parents
38 may be disclosed only as may be necessary for purposes as to
39 determine the eligibility of the pupil for financial aid, to determine
40 the amount of the financial aid, to determine the conditions which

1 will be imposed regarding the financial aid, or to enforce the terms
2 or conditions of the financial aid.

3 (3) The county elections official, for the purpose of identifying
4 pupils eligible to register to vote, and for conducting programs to
5 offer pupils an opportunity to register to vote. The information;
6 ~~however,~~ shall not be used for any other purpose or given or
7 transferred to any other person or agency.

8 (4) Accrediting associations in order to carry out their
9 accrediting functions.

10 (5) Organizations conducting studies for, or on behalf of,
11 educational agencies or institutions for the purpose of developing,
12 validating, or administering predictive tests, administering student
13 aid programs, and improving instruction, if the studies are
14 conducted in a manner that will not permit the personal
15 identification of pupils or their parents by persons other than
16 representatives of the organizations and the information will be
17 destroyed when no longer needed for the purpose for which it is
18 obtained.

19 (6) Officials and employees of private schools or school systems
20 where the pupil is enrolled or intends to enroll, subject to the rights
21 of parents as provided in Section 49068. This information shall be
22 in addition to the pupil's permanent record transferred pursuant
23 to Section 49068.

24 A

25 (c) A person, persons, agency, or organization permitted access
26 to pupil records pursuant to this section ~~may~~ *shall* not permit access
27 to any information obtained from those records by ~~any other~~
28 *another* person, persons, agency, or organization, except for
29 allowable exceptions contained within the Family Educational
30 Rights and Privacy Act of 2001 (20 U.S.C. Sec. 1232g) and state
31 law, without the written consent of the pupil's parent. ~~However,~~
32 ~~this paragraph~~ *This subdivision* does not require prior parental
33 consent when information obtained pursuant to this section is
34 shared with other persons within the educational institution, agency,
35 or organization obtaining access, so long as those persons have a
36 legitimate interest in the information.

37 (e)

38 (d) Notwithstanding any other provision of law, ~~any~~ *a* school
39 district, including ~~any~~ *a* county office of education or
40 superintendent of schools, may participate in an interagency data

1 information system that permits access to a computerized database
2 system within and between governmental agencies or districts as
3 to information or records ~~which~~ *that* are nonprivileged, and where
4 release is authorized as to the requesting agency under state or
5 federal law or regulation, if each of the following requirements
6 are met:

7 (1) Each agency and school district shall develop security
8 procedures or devices by which unauthorized personnel cannot
9 access data contained in the system.

10 (2) Each agency and school district shall develop procedures
11 or devices to secure privileged or confidential data from
12 unauthorized disclosure.

13 (3) Each school district shall comply with the access log
14 requirements of Section 49064.

15 (4) The right of access granted shall not include the right to add,
16 delete, or alter data without the written permission of the agency
17 holding the data.

18 (5) An agency or school district ~~may~~ *shall* not make public or
19 otherwise release information on an individual contained in the
20 database where the information is protected from disclosure or
21 release as to the requesting agency by state or federal law or
22 regulation.